In the Supreme Court of the United States

OCTOBER TERM, 1995

NORFOLK AND WESTERN RAILWAY COMPANY, ET AL.,
PETITIONERS

v.

AMERICAN TRAIN DISPATCHERS ASSOCIATION, ET AL.

CSX TRANSPORTATION, INC., PETITIONER

v.

BROTHERHOOD OF RAILWAY CARMEN, ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RESPONSE FOR THE FEDERAL RESPONDENTS
TO THE MOTION BY THE UNION RESPONDENTS
TO DISMISS THE PETITIONS

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No. 89-1027

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In their motion filed May 25, 1990, respondents American Train Dispatchers' Association and Brotherhood of Railway Carmen (the union respondents) ask this Court to dismiss the petitions in this case on the ground of mootness or, alternatively, on the ground that the petitions no longer present

an important question of federal law warranting resolution by this Court.

The union respondents base their motion on a press release issued by the Interstate Commerce Commission on May 17, 1990. In it, the Commission noted that at a May 15 voting conference it had resolved certain issues left open by the court of appeals' decision remanding the present case to the agency. In particular, the press release advised, the Commission had "review[ed] the relationship between the Interstate Commerce Act and the Railway Labor Act in connection with the treatment of employees in mergers and consolidations over the past 50 years." On the basis of that review, the release added, the Commission had determined that "collective bargaining agreements [may] be modified under 49 U.S.C. 11347 and the ICC's employee-protective conditions, but only with respect to the selection of work forces and the assignment of employees—with some qualifications—and only to the extent necessary to permit the carrying out of a merger or consolidation. Employees' contract rights are otherwise to be preserved and their traditional right to bargain over their pay, rules, and working conditions is not to be undermined." The release concluded that "[i]n light of the new approach stated in its decision, the Commission reversed and vacated the two arbitration awards under review in these cases and remanded them for further negotiation by the involved parties and for consideration by arbitrators if necessary in accordance with the decision."

The union respondents contend that, in light of the Commission decision reported in the press release, the present controversy—concerning the question whether 49 U.S.C. 11341(a) applies to legal obligations arising from collective bargaining agreements—is either moot or of no continuing importance. Whatever the merits of that claim—and, at this time, we take no position on that question—it can hardly

be resolved on the basis of a press release. We anticipate, however, that a Commission decision will be issued in the near future. Accordingly, we respectfully suggest that the Court either (1) deny the motion to dismiss, with leave for the union respondents to refile (if they desire) when the decision ultimately issues, or (2) hold the motion until the Commission's decision issues, at which time the parties can address the appropriateness of the relief sought by the union respondents.

For the foregoing reasons, it is respectfully submitted that the motion to dismiss the petitions should be denied or, alternatively, held until the issuance of the Commission's decision.

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MAY 1990

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* The Solicitor General is disqualified in this case.

U.S. GOVERNMENT PRINTING OFFICE: 1990—262-203/00916